

PUBLIC PROSECUTOR v. BALAKRISHNAN

[A.Cr.J. (Gill J.) November 28, 1966]

[K.L. — Magistrate's Appeal No. 44 of 1966]

Local Authority — Using premises for trade purposes to wit as a printing press, without a licence — Accused holding licence under Printing Presses Ordinance, 1948, for using a printing press — Whether there was any conflict between bye-law and Ordinance — Bye-laws Relating to the Regulation of Dangerous, Unhealthy or Offensive Trades and Garages — Municipal Ordinance (S.S. Cap. 133), s. 58(3).

Printing press — Licence to operate press — Whether licence relates to use of premises as well — Printing Presses Ordinance, 1948 — Printing Presses Rules, 1957.

The accused had been charged with using premises as a printing press for trade purposes without a licence contrary to a bye-law made under the Municipal Ordinance. At the trial the accused produced a licence from the Minister of Interior to keep for use and use a press for the printing of documents at the premises. It was argued that the bye-law was repugnant to section 3(1) of the Printing Presses Ordinance and the Printing Presses Rules, under which the licence had been issued to the accused in respect of the printing press. The learned magistrate acquitted the accused on the ground that what the Minister had set out to sanction under a general law of the land no bye-law could prohibit.

Held: (1) the licence issued by the Minister was a licence in respect of the use of the printing press and the licence by the Municipal Commissioner was a licence in respect of the use of the premises for trade purposes; the two licences were therefore independent of each other;

(2) the bye-law was neither repugnant to the Printing Presses Ordinance, 1948, nor inconsistent with the Printing Presses Rules, 1957 and therefore the magistrate was wrong in acquitting the accused.

Cases referred to:—

(1) *Powell v. May* [1946] 1 All E.R. 444.

(2) *White v. Morley* [1899] 2 Q.B. 34, 39.

MAGISTRATE'S CRIMINAL APPEAL.

Zaitoon binte Othman (Deputy Public Prosecutor) for the appellant.

V. K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Gill J.: The respondent in this case was tried in the magistrate's court, Kuala Lumpur on the following charge:—

"That you did on 15.10.64 at about 9.00 a.m., not being licensed in that behalf by the Commissioner of the Federal Capital of Kuala Lumpur, use premises No. 231, Jalan Brickfields, Kuala Lumpur, within the municipal area, as a printing press for trade purpose, thereby contravening Bye-law 1(u), Pt. VII of the Federated Malay States Gazette Notification 3797 dated 23.8.1935 and punishable under section 58(3) of the Municipal Ordinance (Cap. 133 of the Straits Settlements) as applied to the Malay States including the Municipality of Kuala Lumpur vide the Municipal Ordinance (Extended Application) of 1948."

He was acquitted and discharged without being called upon to enter his defence. Against that acquittal the public prosecutor has now appealed.

The evidence for the prosecution was that, when Mr. K. Balasingam, a municipal health inspector, called at the premises in question on

A the date and at the time mentioned in the charge, the respondent was unable to produce a licence from the Commissioner of the Federal Capital of Kuala Lumpur to use the premises as a printing press for trading purposes. Mr. Balasingam also testified that it was within his knowledge that the respondent had applied for a licence and that his application was refused because he had failed to comply with the condition laid down by the municipality that his motor for running the printing press should have less than five horse-power. The respondent, however, produced a licence (Exhibit D.1) for the current year from the Minister of Interior to keep for use and use a press for the printing of documents at the premises.

At the end of the case for the prosecution it was submitted by defence counsel, on the authority of *Powell v. May*,⁽¹⁾ that no case had been made out against the respondent as the bye-law under which he was charged was repugnant to section 3(1) of the Printing Presses Ordinance, 1948 and inconsistent with rule 3 of the Printing Presses Rules, 1957, under which Ordinance and Rules a licence had been issued to him in respect of his printing press. The learned magistrate agreed with this submission and acquitted and discharged the defendant on the ground that what the Minister had set out to sanction under a general law of the land no bye-law could prohibit.

In *Powell v. May* ⁽¹⁾ the appellant was convicted under a bye-law made by the Local County Council. The bye-law, which was made under the Municipal Corporations Act, 1882, section 23, was, for all essential purposes, in the same terms as those in the Street Betting Act, 1906, section 1(1). It did not, however, provide, as does the Street Betting Act, 1906, section 1(4), that, in the case of an enclosed space, betting was only unlawful if at or near every public entrance there was conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein. No such notice was exhibited on this occasion. It was held that the bye-law was repugnant to both the Street Betting Act, 1906, and the Betting and Lotteries Act, 1934, which, in effect, permit bookmakers to bet at race meetings provided they observe certain conditions; and it was beyond the powers of the county council to enact a bye-law which prohibited them from doing that which the general statutes enabled them to do. The conviction was therefore quashed.

I In the present case the bye-law under which the respondent was charged provides that "no place within the Municipality Area shall, unless licensed by the Commissioner in that behalf, be used for the trade purposes of a printing press." Section 3 of the Printing Presses Ordinance, 1948 provides, *inter alia*, that "the Minister may,

in his discretion, grant to any person in the Federation a licence to keep for use and use a press for the printing of documents . . .” and that “the licence shall be in the prescribed form.” Rule 3 of the Printing Presses Rules, 1957 provides that “a licence or permit granted under the provisions of the Ordinance shall be in the form set out in the First Schedule to these Rules with such variations as the circumstances of such case may require.” The form of the licence under the First Schedule is as follows:—

“Under the provisions of section 3 of the Printing Presses Ordinance, 1948, a licence is hereby granted to . . . and keep for use and use a press for the printing of documents at*

* Here insert a full and precise description of the place. Where the user of the printing press does not occupy the whole house the floor or number (if any) of the room must be specified.”

It will be observed that the essential purpose of the licence issued by the Minister under the Printing Presses Ordinance, 1948 is to authorize a person to keep for use and use a press for the printing of documents. There is nothing in the Ordinance to suggest that the Minister is concerned with the place at which such printing press is to be kept and used. It is true that the statutory licence under the Printing Presses Rules, 1957 specifies the place, but this is only incidental to the use of the printing press. The place inserted in the licence would obviously be the place mentioned in the application for the licence. The Minister does not direct his mind to the place in granting or refusing the licence. The licence required under the bye-law, on the other hand, is strictly a licence for the use of the premises for trading purposes. In other words, the licence issued by the Minister is a licence *simpliciter* in respect of the use of the printing press and the licence by the Commissioner is a licence *simpliciter* in respect of the use of the premises for trade purposes. The two licences are independent of each other. I do not therefore see how it can be argued that the bye-law under which the respondent was charged expressly or by necessary implication professes to alter the general law of the land.

To my mind the bye-law is neither repugnant to the Printing Presses Ordinance, 1948, nor inconsistent with the Printing Presses Rules, 1957. It would appear from his grounds of judgment that the learned magistrate understood the bye-law to mean that “no person shall run a printing press for trading purposes without a licence from the Commissioner.” With all respect to the learned magistrate, that is not what the bye-law says. What the bye-law does say is that no person shall use a place within the Municipality for certain trade purposes without a licence from the Commissioner. As was stated in *White v. Morley*,⁽²⁾ a bye-law is not bad because it deals with something that is not dealt with by the general law.

A For the reasons I have stated I am of the opinion that the learned magistrate misdirected himself on the law and was wrong in acquitting the respondent. I would allow the appeal, set aside the order of acquittal and remit the case back to the magistrate with a direction that he call on the defence. The respondent is directed to appear before the magistrate tomorrow.

Appeal allowed.

ABDUL MANAP v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) November 30, 1966]

[Raub—Criminal Appeal No. 6 of 1966]

Penal Code, s. 414 — Possession of stolen property — Whether presumption under s. 114 of Evidence Ordinance, 1950, applies where accused is charged for disposing of stolen property.

D This was an appeal against the conviction of the appellant for dishonestly disposing of stolen property an offence under section 414 of the Penal Code. It was argued on appeal, *inter alia*, that there was not enough evidence to support the learned magistrate's findings of fact and that the presumption under section 114 of the Evidence Ordinance had been wrongly invoked in this case, as this was a case of disposal of stolen property.

E Held: (1) it was open to the learned magistrate having invoked the presumption under section 114 of the Evidence Ordinance to find that the appellant was a receiver of the property and subsequently to hold that he had disposed of the property;

(2) on the facts of the case the learned magistrate was entitled to come to the conclusion that the appellant was guilty of the offence.

F Case referred to:—

(1) *Public Prosecutor v. Soong Chak Sung* [1955] M.L.J. 144.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Mustapha bin Haji Ali for the appellant.

G *Hashim bin Abdul Majid* (Deputy Public Prosecutor) for the respondent.

H Raja Azlan Shah J.: The appellant was convicted under section 414 of the Penal Code and sentenced to six months imprisonment. He appealed against both conviction and sentence and set up thirteen grounds most of which, to my mind, can be grouped under one or two heads. I have heard the arguments of counsel on behalf of the appellant and I am satisfied that most of them do not require discussion on the ground that they are devoid of substance. However, I feel that there are two substantial grounds of appeal which merit consideration, namely, whether there is enough evidence to support the learned magistrate's conclusions of fact, and whether the presumption under section 114 of the Evidence Ordinance had been properly invoked and, if so, what are the consequences.

The facts as relied upon by the learned